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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/771,289

02/05/2004

Cyril Meziere

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2868

22852

7590

08/22/2007

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EXAMINER

DEAK, LESLIE R

ART UNIT

PAPER NUMBER

3761

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

8

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/771,289	MEZIERE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leslie R. Deak	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 31-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/13/04, 8/19/04, 9/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-30 in the reply filed on 29 June 2007 is acknowledged.
2. Claims 31-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 29 June 2007.

### ***Claim Objections***

3. Claims 1-30 are objected to because of the following informalities: applicant claims that the device is "characterized in that..." and recites several structural limitations of the device. It is unclear whether applicant intends to encompass only the claimed elements ("consisting"), or the claimed elements and other, unclaimed elements ("comprising"). For the purposes of examination, the Examiner is interpreting "characterized in that" to correspond to open-ended "comprising" language.

With regard to claims 19, 21 and 26, applicant claims that "it comprises..." it is unclear what element "it" refers to. For the purposes of examination, the Examiner is interpreting "it" to mean the entire device of claim 1, and that the sensor or stop means may be deployed on any portion of the device.

With regard to claim 30, applicant claims that the base body is associated to "the machine" without indicating which machine the base is associated with. Claim 1 only inferentially includes reference to an extracorporeal blood treatment machine or a renal

replacement machine. The inferential inclusion indicates that the claimed machine is not a portion of the claimed combination. For the purposes of examination, the Examiner is **not** including the blood treatment machines as a portion of the claimed combination in claims 1-29, but **is** including the machine in claim 30, since applicant appears to be claiming an attachment to a particular machine.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-14, 24, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,390,311 to Belokin.

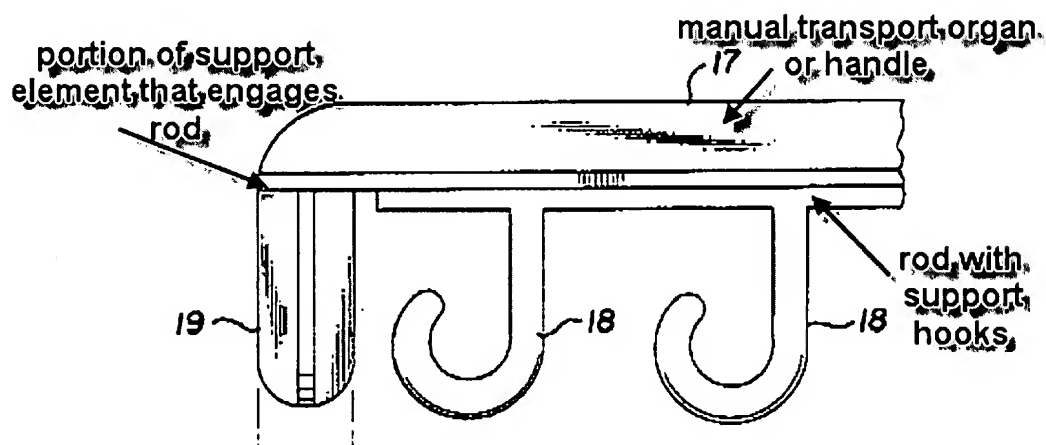
In the specification and figures, Belokin discloses the apparatus as claimed by applicant. With regard to claims 1-4, Belokin discloses a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 13 and a support element 11/17, 12/17, wherein the support element is slidable or rotatable around the base body, creating a horizontal displacement of part of the support element with respect to the base body (see FIG 5,

column 3, line 47 to column 5, line 13). With regard to applicant's limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support for easy access while loading the bags, and rotated inward of the support in a work position for compact location near the patient.

With regard to claims 5 and 6, the support element 11/17, 12/17 comprises two arms that are slidable or movable within supports 21, meeting the limitations of the claims.

With regard to claim 7, the support elements 17 comprise hooks 18 for supporting a container.

With regard to claims 8-13, 24, the support elements comprise a body or rod that carries a top section that may be used as a manual transport organ or handle to rotate the support elements or arms. The body or rod further comprises hooks 18 and is connected to the support element. See Belokin FIG2, as annotated by the Examiner, below.



With regard to claim 14 and the limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support (maximum extraction) for easy access while loading the bags, and rotated inward of the support (minimum extraction) in a work position for compact location near the patient.

With regard to claim 25, applicant claims the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the instant case, the Belokin device is capable of being loaded in the operative loading position, meeting the limitations of the claims.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 15-20, 26-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,355,161 to Shah et al.

In the specification and figures, Belokin discloses the apparatus substantially as claimed by applicant (see rejection above) with the exception of an end stop and a position sensor. With regard to claims 15-18 and 30, Shah discloses a dialysis system

and an apparatus and method for loading bottles of solution into the system. The apparatus includes a support element 102 that holds solution container 20. The apparatus further comprises a motor 202 with an upper and lower limit sensor and assembly 208 that controls movement of the bottle from the loading position to the work position (see column 12, lines 1-50). While the limit sensor and position assembly do not comprise grooves as claimed by applicant, it is the position of the examiner that the Shah reference teaches that such upper and lower endrun stops are desireable in the art, and that it would have been obvious to one having ordinary skill in the art to try a reasonable number of well-known mechanical stop mechanisms to provide the end stop claimed by applicant. Accordingly, applicant's claimed structure is not a patentable improvement over the prior art.

With regard to claims 19-20, Shah discloses that the apparatus may comprise a Hall position sensor in order to determine the position of the containers 20 within the system (see column 14, lines 35-42). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to add a position sensor as disclosed by Shah to the support apparatus disclosed by Belokin in order to determine the position of the elements within the system, as taught by Shah.

With regard to claims 26-28 applicant claims the intended operation of the stop means. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the

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instant case, the combined device suggested by Belokin and Shah is capable of being operated as claimed by applicant, meeting the limitations of the claims.

8. Claims 21-23, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 5,722,947 to Jeppsson et al.

In the specification and figures, Belokin discloses the apparatus substantially as claimed by applicant (see rejection above) with the exception of a weighing means. Jeppsson discloses a dialysis system comprising a support element for holding solution containers (see FIG 1) and a weighing device 7 for weighing the containers and a regulating system 6 for controlling fluid flow based on the weighed containers (see columns 3-4), therefore comprising a measuring and/or control balance. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to add a weighing and control system as disclosed by Jeppsson to the support system disclosed by Belokin in order to control fluid flow through the system, as taught by Jeppsson.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

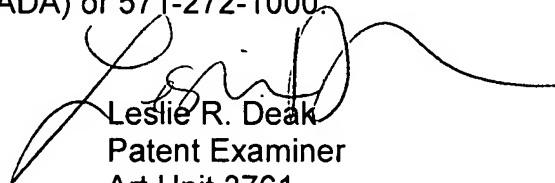
- a. US 5,445,613 Orth
  - i. Clamp position detection system



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leslie R. Deak  
Patent Examiner  
Art Unit 3761  
16 August 2007